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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 000885

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SUBJECT: TURKEY: AKP'S PRELIMINARY DEFENSE TARGETS Chief PROSECUTOR  
AND POLITICIZED INDICTMENT

Classified By: Acting Political Counselor Kelly Degnan, for Reasons  
1.4 (b,d)

¶1. (C) SUMMARY. The ruling Justice and Development Party (AKP) submitted its preliminary defense against the party closure case charging AKP with being a center of anti-secular acts on April 30, two days ahead of deadline. The 98-page defense condemns what it portrays as a contradictory, anti-democratic, unsubstantiated, sloppy, and most of all politicized indictment. In language not likely to please jurists, the defense argues the prosecutor acted in bad faith by filing the indictment and warns Turkey is in danger of becoming an arbitrary bureaucratic or "juristocratic" regime where standards of law and democracy are left behind. The otherwise technical defense objects to the indictment's inclusion of "evidence" from before AKP's founding or from non-AKP members; argues that statements do not meet the legal threshold for becoming a "center" of anti-secular activities; and compares evidence proffered against AKP with similar statements uttered by former presidents and prime ministers. It offers AKP's own definition of secularism to defend party policies and actions, and argues that lifting the headscarf ban at universities through constitutional amendments fails to constitute an anti-secular act. END SUMMARY.

#### A Modern Definition of Secularism

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¶2. (C) Rather than work from the indictment's "rigid...19th century" definition of secularism, AKP holds party actions and policies up to its own definition, which foresees peaceful co-existence of all individuals and does not threaten the basic rights and freedoms of others. AKP actions comply with norms established by the European Court of Human Rights and therefore cannot be anti-secular, according to the pleading. The defense notes the absence of a distinction in Turkey between secularism (separation of state and religion) and laicism (state control of religion).

¶3. (C) The indictment's fundamental argument for AKP's anti-secularism revolves around constitutional amendments adopted by AKP and the far-right Nationalist Action Party (MHP) to lift the university headscarf ban. The defense argues it is inappropriate to link views about girls getting a university education while wearing a headscarf with secularism. The indictment's evidence consists of remarks protected by freedom of expression. The constitutional amendments (which likely triggered the indictment) should be attributed to parliament and not AKP, the defense contends.

"A Web of Contradictions" and No Legal Basis

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14. (C) AKP's defense denounces the prosecutor's accusations of anti-democratic behavior, "takiyye" (religious dissembling), or a secret agenda as contradictory, in view of AKP's record of transparency and its "conservative democrat" political identity. AKP argues that one out of two voters supported the party in July 2007 elections and its deputies represent 80 of Turkey's 81 provinces, making AKP "the guarantor of unity and integrity in Turkey." Rather than being a center against secularism, AKP "socializes secularism", strengthening the public's embrace of the secular nature of the state, according to the defense. The politicization of the case -- evident in the slipshod use of unsubstantiated or disproven newspaper clippings and other legal weaknesses -- hurts Turkish jurisprudence (and the public's trust in law), democracy, the nation, and the state. The defense highlights the indictment's implicit assumptions that the Republic is not sufficiently defended by the voters and that the public's loyalty is debatable.

15. (C) The closure case lacks legal basis, AKP argues; the conditions for being a "center" of anti-secular activities - laid out in Constitution Article 69 - have not been realized. The prosecutor's indictment consists largely of statements, which alone are not sufficient to make the party a "center." Acts mentioned in the indictment are not anti-secular in nature, nor is there evidence the party accepted such acts. As the defense points out, the chief prosecutor failed to request that the party sack violators of Constitutional Article 68/4, as required by the Political Parties Law; charges the PM violated that Article by making unconstitutional remarks are therefore groundless. As far as statements go, politicians should enjoy free speech.

16. (C) The defense attacks the indictment's claims of potential violence stemming from AKP's rule as contradictory. Establishing the

ANKARA 00000885 002 OF 002

potential for violence is a key element in justifying the case externally, as the EU Venice Criteria for legitimate party closure hinge on violence. The indictment claims Islamic terrorism could facilitate a shift from AKP's "moderate Islam model" to a Sharia state, however, none of the evidence presented supports a link to violence or could be characterized as a call to violence, according to AKP's pleading. In addition, although the indictment claims AKP aims to call for violence, it also acknowledges AKP won't need to resort to violence "by using the advantages of being in power and by using the democratic system."

17. (C) To refute charges that AKP officials' statements constitute anti-secular activities, the defense cites similar statements by Republican People's Party (CHP) Deniz Baykal (and quotes CHP's recent billboards stating, "Do not stay in between. Religion is ours. The state is ours. The nation is ours."), former Prime Ministers Bulent Ecevit and Tansu Ciller, former PM and President Suleyman Demirel, and MHP Chairman Devlet Bahceli. Countering the claim that lifting the university entrance exam co-efficient penalty for vocational students (including religious imam-hatip students) is anti-secular, the defense argues the co-efficient was only introduced in 1998, fifteen years after the constitution was approved.

"Legal Strangeness"

18. (C) The defense criticizes as "legal strangeness" the indictment's inclusion of remarks made before AKP was established, claiming the prosecutor wants to psychologically impact Court members. Rhetoric and acts by unidentified individuals or by public employees (such as undersecretaries, deputy undersecretaries, directors general, governors, sub-governors, chief physicians, mayors, school principals, etc.), who should be subject to individual criminal or disciplinary investigation, cannot be attributed to the party, as the indictment attempts to do. Moreover, the defense notes, there are no anti-secular aspects to the acts of public employees named in the indictment. President Gul's inclusion in the closure case is blatantly unconstitutional, according to the defense, which refutes the charge that he approved a Ministry of Foreign Affairs circular concerning outreach to Fethullah Gulen schools by noting that before AKP, presidents, prime ministers, ministers, and even an Air Force general visited and praised Gulen schools.

¶9. (C) Contacts disagree about the nature of AKP's preliminary defense. Ankara University Law Professor Mithat Sencar, who describes the indictment as "so weak it is hard to take seriously," said the preliminary defense's "purely legal" and "lackluster" content, as well as the early filing, give the impression AKP has already accepted its closure. Former President of the High Court of Appeals Sami Selcuk by contrast sees a politically charged document that engages in unnecessary political attacks on the prosecutor; he does, however, agree that AKP's definition of secularism is spot-on. Other contacts call it "flimsy at best" and "a negative for AKP" in that the court is more likely than not to find additional evidence in the pleading that AKP is subverting the secular regime.

¶10. (C) COMMENT. AKP's defense is largely an indictment of the chief prosecutor for shoddy jurisprudence. The attacks against the judiciary are sharp, and the lessons on political science terminology and secularism are didactic; AKP intends to lay claim to the moral high ground and go down swinging. By filing early rather than requesting an extension, as is often done, AKP leaders may have sought to project an image of confidence and control to offset rumors of internal disarray. It also signals that to the limited extent it can, AKP is anxious to move through this process as quickly as possible.

¶11. (C) The timeline is largely determined by the court, however, and is expected to take months. Following the prosecutor's response to AKP's defense, the court will hear oral arguments. A rapporteur will then prepare an assessment, during which both sides can submit additional written pleadings. Once the eleven justices have received the assessment, the chief justice will set a date to convene. Factoring in the court's usual August recess, most contacts predict a decision by October at the earliest. END COMMENT.

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